IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ROBERT IVORY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 00-3022-V
	)	
SHELBY COUNTY GOVERNMENT, A.C. GILLESS, individually and as Sheriff of Shelby County, and MARRON HOPKINS, individually and as Chief Jailer of Shelby County Jail	)	
	)	
Defendants.	)	

ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER
GRANT OF PARTIAL SUMMARY JUDGMENT AS TO DEFENDANT GILLESS,
DENYING SHELBY COUNTY'S MOTION FOR RECONSIDERATION,
AND DENYING HOPKINS' MOTION FOR RECONSIDERATION

Before the court in this civil rights action are the following three separate motions for reconsideration of the court's order, entered November 1, 2001, which granted in part and denied in part the defendants' motions for summary judgment: (1) the motion of the plaintiff, Robert Ivory, filed November 13, 2001; (2) the motion of the defendant Shelby County filed November 13, 2001; and (3) the motion of the defendant Marron Hopkins filed November 21, 2001. The November 1st order dismissed many of Ivory's remaining claims, leaving only Ivory's § 1983 claim against defendant Hopkins in his individual capacity and Ivory's claim under the Tennessee

Public Protection Act against the defendant Shelby County. For the reasons that follow, all three motions are denied.[1]

The Plaintiff's Motion for Reconsideration

The plaintiff, Robert Ivory, asks the court to reconsider its grant of summary judgment as to defendant Gilless. As grounds for reconsideration of the grant of summary judgment to Gilless, the plaintiff maintains that the court failed to consider his theory of liability on the part of Gilless under Tenn. Code Ann. § 41-4-101 and also failed to consider a recent ruling by the Supreme Court of Tennessee, *Spurlock v. Sumner County*, 42 S.W.3d 75 (Tenn. 2001),

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[1] **According to the Sixth Circuit, motions to reconsider are treated as motions to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e). *Moody v. Pepsi-Cola Metropolitan Bottling Co.*, 915 F.2d 201, 206 (6th Cir. 1990). However, such motions are granted "very sparingly." *Plaskon Elec. Materials, Inc. v. Allied Signal, Inc.*, 904 F. Supp. 644, 669 (N.D. Ohio 1995). A motion to reconsider should only be raised when one of the following has occurred: (1) an intervening change in the law; (2) the discovery of new evidence; or (3) the need to correct clear error or correct manifest injustice. *Plaskon*, 904 F. Supp. at 669. A party should not file a motion to reconsider that contains new evidence that could have (or should have) been brought to the court's attention in the previous motion for summary judgment. *Harley-Davidson Motor Co. v. Bank of New England*, 897 F.2d 611, 616 (1st Cir. 1990). Motions to reconsider are not to be used to "merely restyle or re-hash the initial issues" or simply to disagree with the court's findings. In re *August, 1993 Regular Grand Jury*, 854 F. Supp. 1403, 1407 (S.D. Ind. 1994); *F.D.I.C. v. Cage*, 810 F. Supp. 745, 749 (S.D. Miss. 1993). When the parties simply "view the law in a light contrary to that of this Court," the "proper recourse" is not to file a motion to reconsider but rather to file an appeal with the Sixth Circuit. *Dana Corp. v. United States*, 764 F. Supp. 482, 489 (N.D. Ohio 1991).**

which the plaintiff had briefed in a supplemental response to Gilless's motion for summary judgment.

As Gilless correctly points out in his response, Ivory's motion for reconsideration overlooks the fact that this court had already rejected Ivory's theory under Tenn. Code Ann. § 41-4-101 in an earlier order on defendants' motion for partial dismissal. That order provided:

> Plaintiff's argument that this statute somehow makes Gilless and Hopkins individually liable under the Act is wholly meritless. Furthermore, the plaintiff fails to point to any case law which equates the phrase "civilly responsible" with holding the sheriff individually liable for damages, and this court declines to do so.

(Order on Defendants' Motion for Partial Dismissal, March 21, 2001, at 6.) While the above passage from the previous order was directed primarily toward Gilless's liability under the Tennessee Public Protection Statute, the same holds true for Ivory's claims under § 1983. Interpreting the statute as the plaintiff suggests would result in the imposition of respondeat superior liability on Gilless under 42 U.S.C. § 1983, which is clearly not the law.

As to the *Spurlock* decision, the court carefully considered it and applied its holding when issuing the earlier ruling.[2] In

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[2] Ivory's supplementary response bringing *Spurlock* to the court's attention was filed on October 24, 2001, one week before the court issued its order. Ivory's present motion for reconsideration asserts verbatim the identical arguments concerning *Spurlock* set forth in Ivory's earlier response. In addition, the defendant Shelby County's reply to the plaintiff's supplemental

Spurlock, the plaintiffs commenced an action in federal district court under 42 U.S.C. § 1983 against Sumner County, among others, alleging that the defendants conspired to wrongfully prosecute and convict them for crimes that they did not commit. The plaintiffs sought to hold Sumner County liable under *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), contending that "Sumner County Sheriff Richard Sutton was responsible for establishing the law enforcement policies of Sumner County and that they had suffered damages as a result of policies, practices, and customs established or condoned by Sheriff Sutton." *Spurlock*, 42 S.W. 3d at 78. In a motion to dismiss, the county asserted "that Sheriff Sutton did not speak with final policymaking authority for the county because Tennessee law provides that sheriffs are state, not county officers." *Id.* Because Tennessee law was unclear on that point, the federal district court certified the question to the Supreme Court of Tennessee. The supreme court concluded that "sheriffs act as county officials under Tennessee law." *Id.* at 77.

In reaching its decision on Gilless's motion for summary judgment in the present case, the court began with the premise that Gilless was a county official as determined by *Spurlock*. None of the parties disputed this fact. The court then proceeded to the

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response was filed on October 25, 2001, and in its reply, Shelby County briefed the *Spurlock* decision as well.

critical issue of whether Gilless was the final policymaker for Shelby County on employment issues and concluded that Ivory had failed to come forward with evidence to rebut the defendants' showing that Sheriff Gilless had not been delegated final policymaking authority on employment matters.

It is important to note that Ivory's reliance on *Spurlock* for the premise that the sheriff is the final policymaker for the County is misplaced, as that case narrowly holds only that a sheriff serves as a county official when acting in his *law enforcement capacity*. *Spurlock* does not hold that the county sheriff is a final policymaker for the County on all matters, particularly employment policies at the County jail. Thus, *Spurlock* does not change the court's analysis in any manner whatsoever. Accordingly, Ivory's motion for reconsideration as to Gilless is denied.

<u>Defendant Shelby County's Motion for Reconsideration</u>

The defendant Shelby County asks the court to reconsider its earlier ruling which retained Ivory's claim against the County under the Tennessee Public Protection Act after dismissing all the federal claims against the County. Relying on *Gaff v. Federal Deposit Insurance Corp.*, 814 F.2d 311 (6th Cir. 1987) and *Wellman v. Wheeling & Lake Erie Ry.*, 1998 U.S. App. Lexis 607 (6th Cir. Ohio Jan. 12, 1998)(unpublished opinion), the County insists that

when all federal claims against a particular defendant have been dismissed, the Sixth Circuit disfavors a district court's exercise of pendant jurisdiction over state claims.

***Gaff* is not controlling. The issue in *Gaff* was whether the disctirct court correctly dismissed Gaff's state common law claims with prejudice after dismissing his federal claims. The Sixth Circuit held that the district court erred in dismissing the state law claims with prejudice but instead should have remanded them to state court where they were originally filed because in order to dismiss the state law claims with prejudice, the court had to exercise jurisdiction over the claims when there was no basis for jurisdiction.**

***Wellman* is inappposite to the present situation. In *Wellman*, an employment discrimination case, the plaintiff brought claims against his employer, the Wheeling and Lake Erie Railway Company under the ADA and ADEA, as well as state law claims for wrongful discharge and breach of implied contract, among others. On motion of the defendant, the district court granted summary judgment to the defendant on the plaintiff's ADA and ADEA claims, then dismissed the state law claims. In *Wellman*, there was only one defendant, the Wheeling and Lake Erie Railway Company. Once the federal claims against the Wheeling and Lake Erie Railway Company were dismissed, there were no other remaining federal claims.**

Here, there is a co-defendant, Hopkins, and a federal claim, over which this court has original jurisdiction. This federal claim remains pending against Hopkins.

Supplemental jurisdiction of a federal court is codified at 28 U.S.C. § 1367 (1990). The supplemental jurisdiction statute provides:

> **[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.**

In the present case, even though the federal claims against the County have been dismissed, there still remains a federal claim against the one remaining co-defendant, Marron Hopkins. The claim against the County is factually interwoven with the § 1983 claim against Marron Hopkins. Indeed, the County's liability under the Tennessee Public Protection Act is premised on what Hopkins knew and why he recommended Ivory's termination. Thus, the two claims are so related that they form part of the same controversy, and judicial economy and convenience would be served by trying the two claims together. Accordingly, the County's motion for reconsideration is denied.

<u>Defendant Marron Hopkins' Motion for Reconsideration</u>

Hopkins asks the court to reconsider its denial of Hopkins' motion for summary judgment on Ivory's § 1983 claim against him in his individual capacity. As grounds, Hopkins asserts that Ivory has only made conclusory allegations of retaliation unsupported by specific facts. In addition, Hopkins challenges the court's reference to Magistrate Judge James Allen's findings of fact following an evidentiary hearing as part of contempt proceedings in *Little v. Shelby County*, Civil No. 96-2520D(Ml)A (W.D. Tenn. November 21, 2000). Hopkins supports his motion for reconsideration with a supplemental affidavit setting out that he does not recall the conversation with Ivory about the floor plans to the jail, nor does he recall seeing Ivory meeting with Shumpert, the court monitor, and moreover, even if Ivory met with Shumpert, he would not have known what they discussed.[3]

Unlike the plaintiffs in *Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995) and *Williams v. Meece*, 1993 U.S. App. Lexis 3500 (10th Cir. 1993), two cases relied on by Hopkins in his motion for reconsideration, Ivory has made more than conclusory allegations of retaliation. Ivory has alleged specific facts, e.g.: (1) Ivory had

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[3] **As mentioned in note 1, *supra*, affidavits and other evidence that could have been submitted in conjunction with the original summary judgment motion must be filed in a timely manner with that motion to be given weight or deference by the court. *Harley-Davidson Motor Co. v. Bank of New England*, 897 F.2d 611, 616 (1st Cir. 1990).**

a conversation with Hopkins about providing the blueprints to the jail to Shumpert; (2) Ivory had several conversations with Shumpert which were observed by Hopkins; and (3) it was general knowledge at the jail that Hopkins resented Shumpert's presence in the jail and at the very least he instructed staff "not to be friendly" to Shumpert - Hopkins admitted as much in his testimony at the contempt proceedings. (Nov. 20, 2000, Findings of Fact, page 2.) Ivory has alleged sufficient facts to withstand Hopkins' motion for summary judgment. The supplemental affidavit of Hopkins merely reinforces the court's earlier determination that genuine issues of material fact regarding whether Hopkins fired Ivory for retaliatory purposes exist.

Whether or not the contempt order in *Little* is final or not is irrelevant. In denying Hopkins' motion for summary judgment, the court did not rely on Judge Allen's findings of fact to establish the fact that Hopkins made certain statements, but rather merely referenced the contempt proceedings and observed that at least one other judge has found Hopkins to be less than credible. Accordingly, Hopkins' motion for reconsideration is denied.

IT IS SO ORDERED this 6th day of December, 2001.

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DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE